Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Implementation of the Local	)	
Competition Provisions in the	)	CC Docket No. 96-98
Telecommunications Act of 1996	)	
(Access to Rights-of-Way)	)	

JOINT PETITION FOR RECONSIDERATION AND/OR CLARIFICATION OF THE EDISON ELECTRIC INSTITUTE AND UTC, THE TELECOMMUNICATIONS ASSOCIATION

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SUMMARY

EEI and UTC (Petitioners) request reconsideration and/or clarification of certain rules and policies in order to more appropriately balance the legitimate operational requirements of utilities with the FCC's desire both to promote cooperation between utilities and prospective attaching entities, and to increase the availability of facilities and services. The Petitioners seek reconsideration of the FCC's decision to require utilities to exercise their powers of eminent domain on behalf of attaching entities. Eminent domain is a right granted to some utilities by state law to affect interests in real property for very limited purposes. Its exercise should not -- neither under our federal system can it -- be regulated or mandated by the FCC.

The Petitioners seek clarification that section 224(i) is not to be construed as affecting the right of a utility to secure reimbursement, pursuant to a negotiated agreement, when an attaching entity requests or requires modification of a facility. Similarly, an attaching entity allowed to occupy reserve space should be required to reimburse the pole owner and all attaching entities if it requires modification of the facility when the space is reclaimed by the utility

The circumstances under which utilities will be required to notify attaching entities of proposed facility modifications should be further clarified. In addition, issues surrounding identification of attaching entities, assessing costs of access and the complaint procedure need to be addressed by the FCC. Finally, the Petitioners seek clarification regarding several issues related to the exercise of state preemption under section 224.

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Pursuant to Section 1.429 of the FCC's Rules, the Edison Electric Institute (EEI) and UTC, the Telecommunications Association (UTC) hereby request reconsideration and/or clarification of certain issues addressed in the *First Report and Order*, FCC 96-325, released August 8, 1996, in the above-captioned matter. Specifically, the EEI and UTC (collectively referred to as the "Petitioners") request reconsideration or clarification of issues addressed at Section XI.B. (paragraphs 1119-1240) of the *FR&O* relating to access to rights-of-way by telecommunications service providers.

I. Introduction

EEI is the association of the United States investor-owned electric utilities and industry associates worldwide. UTC is the national representative on communications matters for the nation's electric, gas and water utilities and natural gas pipelines. EEI

and UTC fully participated in this proceeding by filing Joint Comments and Joint Reply Comments in response to the *Notice of Proposed Rulemaking*, FCC 96-182, released April 19, 1996 (*NPRM*).

In their Comments and Reply Comments, the Petitioners focused on the direct impact that the FCC's interpretation and implementation of the Pole Attachments Act, 47 U.S.C. §224, as amended by the Telecommunications Act of 1996, will have on the country's investor-owned electric utility industry. The Petitioners stressed that in implementing the amendments to Section 224, the FCC must recognize that utilities design, own and maintain poles and other distribution facilities as an integral part of their obligation to provide reliable, safe and affordable electric service to the public, and that third-party telecommunications attachments to utility facilities are an incidental use that should not be allowed in any way to undermine or detract from the primary purpose of these facilities. Because of the multitude of state and local laws, regulations and other variables relating to these facilities, the Petitioners urged the FCC to adopt flexible regulations for the speedy and equitable resolution of conflicts where parties are unable to reach agreement, rather than attempting to define in advance all the conditions for access.[1]

[1] The Petitioners, as well as other commenting parties, questioned whether the amendments to Section 224 authorize a taking of private property for which just compensation is not provided, in violation of the Fifth Amendment to the U.S. Constitution. See *Loretto v. Teleprompter Manhattan CATV*, 458 U.S. 419 (1982) and *Bell Atlantic Telephone v. FCC,* 24 F.3d 1441 (D.C. Cir. 1994). While acknowledging that the access provisions of Section 224 cannot reasonably be construed as discretionary on the part of the utility, the FCC disclaims any authority to declare an Act of Congress to be unconstitutional, and suggests that the rate formula outlined in that section, but yet to be implemented by regulation, will provide just compensation consistent with the Fifth Amendment. *FR&O*, paras. 1191-92. In further commenting on the FCC's implementation of the amendments to Section 224, the Petitioners do not in any way concede the constitutionality of Section 224, or the regulations promulgated thereunder.

To a large extent, the rules and policies adopted in the *FR&O* reflect the utility industry's advice to adopt guidelines and procedures for resolving pole attachment disputes. The Petitioners commend the FCC for its careful analysis of the numerous comments filed on the right-of-way provisions of the *NPRM*, as well as its general recognition that different policies should apply depending on whether the facilities are owned by an electric utility or a telecommunications carrier. However, the Petitioners hereby request reconsideration and/or clarification of certain rules and policies in order to more appropriately balance the legitimate operational requirements of utilities with the FCC's desire both to promote cooperation between utilities and prospective attaching entities, and to increase the availability of facilities and services.

II. Request for Reconsideration

A. The FCC Must Reconsider Its Decision To Require Utilities To Exercise Rights Of Eminent Domain On Behalf Of Attaching Entities

Section 224(f)(1) mandates that a utility grant nondiscriminatory access to any pole, duct, conduit, or right-of-way that is owned or controlled by it. In the *FR&O*, the FCC noted that the scope of a utility's ownership or control of an easement or right-of-way is a matter of state law, and that the FCC cannot structure a general access requirement "where the resolution of conflicting claims as to a utility's control or ownership depends upon variables that cannot now be ascertained."[2]

Despite the FCC's recognition that it cannot formulate general policies where there may be variations in state laws affecting interests in real property, the FCC takes the

[2] *FR&O*, para. 1179.

remarkable step of requiring utilities to exercise their powers of eminent domain to establish new rights-of-way for the benefit of third parties:

> We believe a utility should be expected to exercise its eminent domain authority to expand an existing right-of-way over private property in order to accommodate a request for access, just as it would be required to modify its poles or conduits to permit attachments. Congress seems to have contemplated an exercise of eminent domain authority in such cases when it made provisions for an owner of a right-of-way that "intends to modify or alter such . . . right-of-way. . . ."[3] (notes omitted)

The Petitioners strenuously object to this interpretation. Eminent domain is a right granted to some utilities by state law to affect interests in real property for very limited purposes. Its exercise should not -- neither under our federal system can it -- be regulated or mandated by the FCC.

Utilities exercise the right of eminent domain only as a last resort, if at all. Foremost, the exercise of this right carries a "cost" to the utility that cannot be measured in dollars; for example, loss of goodwill and diversion of company time/resources to complex regulatory approval processes, and perhaps litigation over property valuation. As a result, some utilities have adopted corporate policies not to exercise this right, or to use it only to further the construction of transmission plant, not distribution plant.

Rights to eminent domain vary widely among the states. For example, state law might not permit condemnation for the benefit of a third-party; an electric utility might be permitted to condemn property only for the benefit of its electric operations; or condemnation might be unavailable for property located in certain areas, such as very near a home, school, or hospital.

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[3] *FR&O*, para. 1181.

In some states, condemnation must be preceded by a corporate resolution based on the utility's "planning power." Requiring a utility to condemn property on behalf of a third-party would therefore compel these utilities to have access to and otherwise participate in the "planning" process of telecommunications carriers and cable television operators, and *vice versa*.

The "principle of nondiscrimination established in Section 224(f)(1)," and referenced in paragraph 1162 of the *FR&O*, can only be reasonably interpreted to require that utilities that exercise eminent domain in order to expand their own ability to offer telecommunications services must "do likewise for telecommunications carriers and cable operators." Where, for example, an electric utility has a right of eminent domain but uses it only sparingly or not at all in connection with its electric operations, it is not discriminatory for it to withhold the exercise of that right for the benefit of third party telecommunications or cable television operators.

Eminent domain under most state laws is premised upon an exclusive franchise. Where there is no longer such a franchise, any exercise of eminent domain may now be subject to expensive and lengthy judicial challenge by any number of private or public parties.

The Petitioners therefore request the FCC to eliminate any requirement, or even an implication, that utilities should exercise powers of eminent domain for the benefit of an attaching entity.

III. Request for Clarification

A. Section 224(i) Should Not Be Construed As Affecting The Right of A Utility To Secure Reimbursement When An Attaching Entity Requests Or Requires Modification Of A Facility

Section 224(i) provides as follows:

> (i) An entity that obtains an attachment to a pole, conduit, or right-of-way shall not be required to bear any of the costs of rearranging or replacing its attachment, if such rearrangement or replacement is required as a result of an additional attachment or the modification of an existing attachment sought by any other entity (including the owner of such pole, duct, conduit, or right-of-way).

This section grants reimbursement rights to attaching entities when another attaching entity makes a modification. It only makes sense, and is the only just conclusion, that the pole owner must also be entitled to such reimbursement if it is required to incur any expense as a result of the actions of an attaching entity.

Current pole attachment agreements typically include a provision allowing the utility to secure reimbursement if an attaching entity causes the utility to incur expenses due to changes made at the request of, or otherwise to meet the needs of, the attaching entity. Since "pole attachment" is defined as an attachment by a "cable television system" or a "provider of telecommunications service," and a utility is not itself an attaching entity (if it is not a cable operator or telecommunications service provider),[4] a utility would not be entitled to reimbursement under an overly literal reading of Section 224(i) as implemented by Section 1.1416(b). Moreover, nothing in Section 224 or the legislative history indicates that Congress intended to change the current practice of

[4] *See*, 224(a)(4) and 224(c)(2)(B).

utility pole owners to secure reimbursement when an attaching entity causes the utility to incur expenses due to rearrangements/modifications.

B. Reservation of Space By An Electric Utility

1. An Attaching Entity Allowed To Occupy Reserve Space Should Be Required To Reimburse The Pole Owner And All Attaching Entities If It Requires Modification Of The Facility When The Space Is Required By The Utility

The FCC noted that "near-universal public demand for their utility services, while imposing certain obligations, arguably entitles utilities to certain prerogatives vis-à-vis other parties, including the right to reserve capacity to meet anticipated future demand for those utility services."[5] However, in order to promote its perception of the goals of Congress that space on utility facilities not go unused when a cable television operator or telecommunications carrier could make use of it, the FCC adopted a policy that will permit an electric utility to reserve space "if such reservation is consistent with a bona fide development plan that reasonably and specifically projects a need for that space in the provision of its core utility service."[6] When the utility has an actual need for the space, the utility may recover the space for its own use, and must give the displaced entity the opportunity to pay for the cost of any modifications needed to expand capacity and to continue to maintain its attachment.[7]

The Petitioners request clarification that this policy must also be read in conjunction with Section 224(i) on the reimbursement of expenses when an attaching

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[5] *FR&O*, para. 1168

[6] *FR&O*, para. 1169.

[7] As noted above, mandatory access to any space on utility facilities, whether "reserved" or not, raises a Fifth Amendment issue.

entity requires a modification that causes other attaching entities or the pole owner to rearrange their facilities. The FCC should also make clear that the reimbursement policy of Section 224(i), as embodied in Section 1.1416(b), applies to an attaching entity in the reserve space who exercises the option of modifying the facility when the utility recovers the reserve space for its own use.

2. An Electric Utility's Reservation Of Space Above The "Communications" Space Should Be Considered Presumptively Reasonable

The FCC appears to have recognized that it would be difficult, and inappropriate, to specify an amount of space that an electric utility could reserve on its pole, noting that the record did not contain sufficient data for it to establish a presumptively reasonable amount of pole or conduit space that an electric utility may reserve. Parties are expected to agree on the amount of reserve space, and disputes will be resolved on a "case-by-case approach based on the reasonableness of the utility's forecast of its future needs and any additional information that is relevant under the circumstances."[8]

It is inappropriate for the FCC to restrict utilities to reserving space only as part of a "bona fide development plan." Electric utilities have heretofore generally not been required to create, or submit for public scrutiny, "development plans" respecting facility expansion in the detail necessary to reflect how expansion could impact access to or use of their poles or other facilities. Moreover, in today's changing utility industry, the ability to accurately create such forecasts is severely degraded.

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[8] *FR&O*, para. 1169.

By restricting a utility's right to reserve space in this manner, the FCC is compelling each utility to either (1) spend millions of potentially unrecoverable dollars to develop a highly speculative pole-by-pole development plan; or (2) face repeated complaints from attaching entities disputing requests to vacate, at their cost, what has been traditionally viewed as "electric" space on the pole when it is needed for the expansion of electric service. In fact, no utility installs plant for any reason other than for its own future use. There is also a serious question as to the FCC's jurisdiction to examine the "reasonableness" of an electric utility's forecasts as to the development and use of its facilities for the provision of electric service. If Congress had intended the FCC to regulate the planning, development, and operation of electric power systems, it would have done so in clear and unmistakable language, particularly given the fact that Congress has already established an intricate regulatory framework for this industry. The Petitioners therefore request the FCC to establish, at a minimum, a presumption that it would be reasonable for an electric utility to reserve any space above what traditionally has been referred to as "communications space."

The FCC should also clarify that the installation of an electric utility's own internal communications cables within the "electric" space on the pole is consistent with the reservation of this space for utility use, and that denial of access to unused space in order to accommodate a utility's near-term expected use of that space for its internal communications needs would not be unreasonable, any more than it would be unreasonable were such denial based on a need to expand electric plant *per se*.

C. Notification of Proposed Modifications

1. The Circumstances Under Which Utilities Will Be Required To Notify Attaching Entities Of Proposed Facility Modifications Should Be Further Clarified

Section 224(h) provides as follows:

> (h) Whenever the owner of a pole, duct, conduit, or right-of-way intends to modify or alter such pole, duct, conduit, or right-of-way, the owner shall provide written notification of such action to any entity that has obtained an attachment to such conduit or right-of-way so that such entity may have reasonable opportunity to add to or modify its existing attachment. Any entity that adds to or modifies its existing attachment after receiving such notification shall bear a proportionate share of the costs incurred by the owner in making such pole, duct, conduit or right-of-way accessible.

In the *FR&O*, the FCC noted that "not all adjustments to utility facilities are alike. Some adjustments may be sufficiently routine or minor as to not create the type of opportunity that triggers the notice requirement."[9] However, Section 1.1403(c), as amended, provides in pertinent part as follows:

> (c) A utility shall provide a cable television system operator or telecommunications carrier no less than 60 days written notice prior to: . . . (3) any modification of facilities other than routine maintenance or modification in response to emergencies.

The Petitioners request the FCC to clarify that the 60-day notification requirement for facility modifications should not be construed to limit a utility's ability to promptly serve new customers. For example, some states require utilities to provide prompt service (e.g., within three days) to new customers. It would be impossible to meet these requirements (which are also good business practices) if the utility were compelled by the

[9] *FR&O*, para. 1207.

FCC to delay work for a period of 60 days pending notification and response of entities with attachments on the same facilities involved in the provisioning of utility service.

Likewise, the FCC should clarify that the 60-day notification requirement should not be applied in circumstances where routine, nonrepair work results in "modification" of a utility facility; it should only apply to major rebuilds. To expand the scope of the notification requirement beyond this will place electric utilities and their customers at the mercy of cable television operators and telecommunications providers.

2. Facility Modifications Made By A Utility To Comply With Changes To The NESC Should Not Obligate the Utility To Share In the Cost Of A Pole Change-Out Requested By An Attaching Entity

In the *FR&O*, the FCC adopted a general approach to apportioning the costs of facility modifications requested by an attaching entity. Under this approach, modification costs are to be paid only by entities for whose benefit the modification is made, or who use a proposed modification as an opportunity to adjust its preexisting attachment. Entities with preexisting attachments that obtain an "incidental benefit," but which do not initiate or affirmatively participate in the modification, are not to be held responsible for the resulting cost. As for pole owners themselves, the FCC notes that imposition of cost burdens for modifications they do not initiate "could be particularly cumbersome if excess space created by modifications remained unused for extended periods."[10]

The Petitioners request clarification of these policies as related to compliance with safety standards, such as the NESC. In the *FR&O*, the FCC indicated that "[a] utility or

[10] *FR&O*, paras. 1212-1213.

other party that uses a modification as an opportunity to bring its facilities into compliance with applicable safety or other requirements will be deemed to be sharing in the modification and will be responsible for its share of the modification cost." However, under the "grandfathering" provisions of the NESC, utilities do not have to modify a facility to meet code changes unless and until something more than a minimal amount of other work is done. If that other work is necessitated only because of the utility's obligation to allow attachments, it would not be fair to require the utility to bear the whole cost of the compliance upgrade. But for the request of the attaching entity, the utility would not have been required to modify its facilities at all. The Petitioners therefore request clarification that a utility will not be required to share in the cost of a proposed facility change-out where the only modifications that will be made by a utility as a result of the change-out are those modifications necessitated by changes in the NESC since the existing facilities were installed.

3. Agreements On Notification And Payment For Rearrangement Should Supercede The FCC's Requirements

The FCC should clarify that agreements between utilities and attaching entities regarding rearrangement of facilities and notification of proposed facility modifications will supercede the FCC's rearrangement and notification rules. For example, some utilities already have agreements with cable television operators whereby the utility has assumed responsibility for relocating or rearranging the pole attachments, at a negotiated rate and without prior notice to the cable operator, if it is necessary to change-out a pole. Although the FCC has encouraged pole owners and attaching entities to enter private

agreements on notification of proposed modifications, clarification is requested that parties may enter private agreements regarding allocation of costs that may vary from the policies adopted in this proceeding.

4. All Attaching Entities Should Be Required To "Tag" Their Attachments To Facilitate Notifications

Given the large number of poles owned by a typical utility, as well as the number and variety of attachments that are currently made to utility facilities and that are expected to be made in the future, it could be very difficult for a utility to provide timely notice of facility modifications unless some procedure is available to permit the ready identification of all attaching entities. Moreover, many utilities have discovered attachments on their facilities for which the attaching entity has provided no notice to the utility. If these facilities are not properly identified, costs cannot be properly allocated among the attaching entities.

The Petitioners therefore urge the FCC to require attaching entities to "tag" their attachments, at their expense, in order to facilitate the notification process and the proper allocation of costs among attaching entities. In addition, a utility should not be penalized for the lack of, or a delay in, notice regarding modifications if the utility is unable to identify whose attachments are on the pole due to the failure of the attaching entity to adequately identify its facility.

D. Requests for Access and Complaint Procedures

1. Requests For Access Should Be Clear And Sufficient

The FCC has imposed on the utility the burden of justifying why its denial of access to a cable television operator or telecommunications carrier is reasonable. Section 224(f)(2) explicitly provides that an electric utility may deny access "where there is insufficient capacity and for reasons of safety, reliability and generally applicable engineering purposes." A telecommunications carrier or cable television operator filing a complaint must establish a prima facie case, which, among other things, must show it is timely filed, must state the grounds given for denial of access, the reasons those grounds are unjust or unreasonable, and the remedy sought. A utility that receives a "legitimate inquiry regarding access" is expected to make maps, plats and other relevant data available for inspection and copying. Further, a utility is required to respond to a written request for access within 45 days of the request.

The Petitioners request clarification that an entity requesting access to utility facilities must provide sufficient information for the utility to evaluate the request, and that the 45-day time period to respond to a request will not begin until the entity requesting access has provided this information. While it seems implicit that a request meet a minimum threshold of sufficiency, there is ambiguity on this point due to the emphasis on the specific grounds for denial cited in Section 224(f)(2); *i.e.*, lack of capacity, safety, reliability or engineering standards.

2. A Utility Should Be Permitted To Recoup Expenses Associated With Furnishing Information To A Prospective Attaching Entity And To Require A Confidentiality Agreement

The Petitioners request clarification that a utility may recoup its labor and administrative expenses associated with providing maps, plats and other data to entities making legitimate inquiries regarding access. Such costs are appropriately borne by the entity making the inquiry as opposed to the utility or other attaching entities. These costs are also more in the nature of "make-ready" costs that have traditionally been borne directly by the beneficiaries of these costs.

In addition, the Petitioners request clarification that a utility may condition the furnishing of such information on the requesting party executing a confidentiality agreement. The Petitioners believe such an agreement would represent a "reasonable condition[] to protect proprietary information" as suggested by the FCC in the *FR&O*.[11]

3. The Deadline For Filing An Access Complaint Should Be Clarified

At paragraph 1225 of the *FR&O*, it is indicated that a party requesting access may file a complaint within 60 days after receipt of a denial notice from the utility. However, Section 1.1404(k) states that the complaint shall be filed within 30 days of such denial. Petitioners suggest that the 30-day limitation as stated in the Rule is correct since it corresponds to the FCC's stated desire to adopt an expedited procedure for the resolution of such complaints.

[11] FR&O, para. 1223.

E. State Preemption

1. State and Local Requirements Affecting Pole Attachments Should Be Accorded Preemptive Authority To The Extent They Do Not Directly Violate Section 253

Section 224(c)(1) provides as follows:

> (c)(1) Nothing in this section shall be construed to apply to, or to give the Commission jurisdiction with respect to rates, terms and conditions, or access to poles, ducts, conduits, and rights-of-way as provided in subsection (f) for pole attachments in any case where such matters are regulated by the State.

At paragraph 1154 of the *FR&O*, the FCC notes that state and local requirements affecting attachments are entitled to deference even if a state has not sought to preempt federal regulations under section 224(c). The FCC will presume state and local requirements to be reasonable, and these requirements will remain applicable unless a complainant can show a direct conflict with federal policy. The FCC notes that the discretion of state and local authorities to regulate in the area of pole attachments is tempered by Section 253, which invalidates all state or local requirements that "prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service."

The Petitioners request clarification that where a state has certified that it regulates rates, terms and conditions for pole attachments, its regulations in this area are not only entitled to deference but themselves have preemptive effect to the extent they do not directly violate Section 253. Further, the FCC should clarify that where a state regulates access to poles, the state's regulation has preemptive effect irrespective of any

certification to the FCC or procedural requirements associated with such regulation, but again, subject to the conditions of Section 253.[12]

At paragraph 1240 of the *FR&O*, the FCC suggests that it will not recognize a state as regulating "access" issues unless there is an established procedure for resolving access complaints in a state forum, including a requirement for the relevant state authority to resolve an access complaint within a set period of time. However, Section 224(c)(3), which establishes the conditions for a state to "reverse preempt" the FCC, only relates to regulation of "rates, terms and conditions." Therefore, state regulation of "access to poles, ducts, conduits, and rights-of-way as provided in subsection (f)" has preemptive effect under Section 224(c)(1) without regard to certification to the FCC or any procedural requirements for handling complaints. Thus, for example, where a local authority has established requirements regarding shared access to and use of utility infrastructure, such requirements are entitled to preemptive effect under Section 224(c).

2. Section 1.1414(a)(2) of the Rules Should Be Revised To Conform To Section 224(c)(2)(B)

Consistent with the expansion of the scope of 224 from cable television attachments to telecommunications service attachments, amended section 224 also expands the states' ability to preempt federal regulation of rates, terms and conditions of pole attachments used for telecommunications services as well as cable attachments. Specifically, revised section 224(c)(2)(B) requires that states wishing to

[12] It is important to remember that "state," as defined in Section 224 includes any "political subdivision, agency, or instrumentality" of a state, territory or possession of the United States or the District of Columbia.

exercise their preemption authority certify that they "consider the interests of the subscribers of the services offered via such attachments."

The FCC needs to revise rule section 1.1414(a)(2) to conform with revised section 224(c)(2)(B). In addition, the FCC needs to clarify that even minimum regulation of telecommunications and cable rates and services on behalf of consumers including consumer interest laws is sufficient to meet the requirement that the state considers the interests of subscribers. Finally, the Commission should clarify whether states that had previously exercised their preemption authority over pole attachment rates, terms and conditions for cable television services are now required to recertify. If such recertification is necessary, the Petitioners suggest that states that have previously preempted federal pole attachment regulation be given a rebuttable presumption that they intend to continue to exercise such authority and be deemed to be certified. In the alternative, these states should be allowed to continue to exercise this preemption during a reasonable interim period.

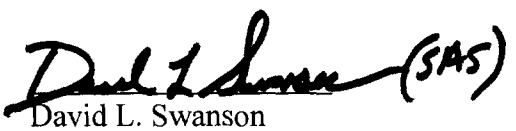
IV. Conclusion

The Petitioners commend the FCC for its thorough treatment of the issues concerning access to poles, ducts, conduits and rights-of-way. For the most part, the FCC correctly determined that, because of the multitude of variables involved in these arrangements, it would be unrealistic and inadvisable to set specific requirements for the negotiations that must occur between attaching entities and utility pole owners. In addition, the new policies generally acknowledge that different considerations apply when access is being sought to the facilities of an electric utility as opposed to those of a telecommunications carrier.

However, certain of the policies adopted by the FCC, if not reconsidered or clarified, will interfere with the ability of an electric utility to provide service to the public in a manner that complies with its public charter and that is consistent with customer expectations and the realities of the marketplace. For example, if Congress had intended telecommunications carriers to have the ability to condemn private property, it is reasonable to assume that Congress would have provided for this authority directly and explicitly. Likewise, if Congress intended the FCC to become involved in overseeing the system expansion plans of electric utilities, it would have done so in clear and unmistakable language, given the pervasive regulatory scheme already in place for this industry. The Petitioners therefore urge the FCC to reconsider and/or clarify certain of the rules and policies adopted in this proceeding to more appropriately balance the rights of telecommunications carriers with the rights and needs of electric utilities.

WHEREFORE, THE PREMISES CONSIDERED, EEI and UTC request the Federal Communications Commission to take action in accordance with the views expressed in this petition for reconsideration/clarification.

Respectfully submitted,

By: 

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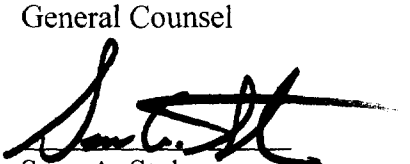

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Dated: September 30, 1996

CERTIFICATE OF SERVICE

I, Ryan Oremland a legal assistant of UTC, *The Telecommunications Association*, hereby certify that I have caused to be sent, by hand-delivery, on this 30th day of September 1996, a copy of the foregoing to each of the following:

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